

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12-cv-153-PMD**

DENNIS ROGER VANDYKE,)	
)	
)	
Plaintiff,)	
)	
Vs.)	<u>ORDER</u>
)	
THE HONORABLE ROBERT)	
J. CONRAD, JR., Chief District Judge,)	
Western District of North Carolina,)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on a review of Plaintiff's Application to Proceed Without Prepayment of Fees or Costs, (Doc. No. 1-1), and a review of Plaintiff's Complaint, filed under 42 U.S.C. § 1983, (Doc. No. 1). 28 U.S.C. §§ 1915; 1915A.

Plaintiff is currently a prisoner incarcerated in the Rutherford County Jail. Plaintiff is a frequent, if not record, filer of pro se lawsuits in this district. A review of Plaintiff's history within this district reveals he has filed no less than twenty-three (23) lawsuits in this court, at least fifteen (15) of which were complaints filed under 42 U.S.C. § 1983, with fifteen (15) accompanying applications to proceed *in forma pauperis*. On August 1, 2006, the Honorable Graham C. Mullen provided an overview of Plaintiff's allegations in eight (8) of these complaints and made the following findings and warning in an order granting defendants' motion for summary judgment:

On June 21, 2006 alone, Plaintiff filed five separate Complaints requiring this Court's time and resources. All five of those Complaints were dismissed on initial review for failure to state a claim for relief, frivolousness, or failure to file in the proper district. Plaintiff's frequent filings are abusive in that they each require significant time and attention from the Court's legal staff that could be better served

on cases that state legitimate constitutional violations. Plaintiff is put on notice that because he has had at least three cases dismissed, in this district alone, as frivolous or for failure to state a claim upon which relief may be granted, he may not file future civil actions or appeal a judgment in a civil proceeding under 28 U.S.C. § 1915 in any federal district unless he is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

(Case No. 1:05-cv-357, Doc. No. 31 at 4) (emphasis in original). Plaintiff appealed, and the United States Court of Appeals for the Fourth Circuit affirmed summary judgment for the defendants for the reasons stated in Judge Mullen's Order. VanDyke v. O'Donell, No. 06-7454, 222 F. App'x 264 (4th Cir. Mar. 27, 2007); (Case No. 1:05-cv-357, Doc. No. 39).

The provisions of 28 U.S.C. § 1915 are mandatory and define the degree and scope of this Court's initial review of Plaintiff's Complaint. See Crawford-El v. Britton, 523 U.S. 574, 596 (1998) (discussing the Prisoner Litigation Reform Act ("PLRA")). Section 1915(g) provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

At least three of Plaintiff's previous complaints were dismissed on the grounds that they were frivolous or failed to state a claim upon which relief may be granted. See, e.g., (Case Nos. 1:05-cv-357-GCM; 1:06-cv-172-GCM; 1:06-cv-200-GCM; 1:12-cv-113-RJC).

Plaintiff filed this action on June 15, 2012, naming as the sole Defendant the Honorable Robert J. Conrad, Jr., Chief Judge for the Western District of North Carolina. On June 29, 2012, this matter was referred to the undersigned. (Doc. No. 2). Plaintiff appears in the Complaint to be alleging that Chief Judge Conrad violated Plaintiff's constitutional rights by dismissing numerous lawsuits that Plaintiff has filed in this Court. Plaintiff alleges, among other things, in the Complaint

that Judge Conrad should be removed from the bench because he “is unlawfully denying me my right to a jury trial taking advantage of my mental illness with his law knowledge” and “he is a[n] unfair judge conspiring with other unlawful law breakers that manufacture[d] fictitious [sic] statements to unlawfully abuse there [sic] authority invested in them.” (Doc. No. 1 at 4).

Plaintiff is subject to § 1915(g)’s bar to filing civil actions under the PLRA without prepayment of the filing fee and he has not shown that he is “under imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g). Pursuant to 28 U.S.C. § 1915(g), Plaintiff’s Application to Proceed *in forma pauperis* must be **DENIED**. This Court will **DISMISS** Plaintiff’s Complaint without prejudice to his ability to re-file with prepayment of the filing fee.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff’s Application to Proceed *in forma pauperis*, (Doc. No. 1-1), is **DENIED**;
2. Plaintiff’s Complaint, (Doc. No. 1), is **DISMISSED without prejudice**.



PATRICK MICHAEL DUFFY
United States District Judge

July 24, 2012
Charleston, South Carolina